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In The

Supreme Court of the United States

October Term, 1994

EL DORADO PALM SPRINGS, LTD.,
a California Limited Partnership
d/b/a El Dorado Mobilehome Park,

Petitioner,

vs.

RENT REVIEW COMMISSION OF THE
CITY OF PALM SPRINGS,

Respondent,

RESIDENTS OF EL DORADO MOBILEHOME PARK,

Real Party in Interest-Respondent.

Petition For Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

BRIEF OF RESPONDENT, RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS, IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

WILLIAM W. WYNDER
RUTAN & TUCKER
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92628-1950

(714) 651-5100

Attorneys for Respondent,
Rent Review Commission of the
City of Palm Springs

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED FOR REVIEW

Whether the October 30, 1991 rulings of the Rent Review Commission of the City of Palm Springs correcting its prior administrative rulings of October 17, 1988 to be consistent with the California "vested rights" doctrine, as announced in the decisions of the California Court of Appeal, Fourth Appellate District, Division Two, in *Palacio de Anza v. Palm Springs Rent Review Commission*, 209 Cal.App.3d 116, 257 Cal.Rptr. 121 (1989), and *El Dorado Palm Springs Limited v. Rent Review Commission*, 230 Cal.App.3d 335, 281 Cal.Rptr. 327, *review denied*, 91 Cal. LEXIS 4092 (1991), present any important question of federal law which has not been, but should be, settled by the United States Supreme Court?

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No. 94-708

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BRIEF OF RESPONDENT, RENT REVIEW COMMISSION OF THE CITY OF PALM SPRINGS, IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

I.

SUMMARY OF THE ARGUMENT

The Residents'[1] Cross-Petition for Writ of Certiorari, like the Landlord's petition before it, seeks to relitigate state-law questions long-ago resolved by the opinions of the California Court of Appeal, Fourth Appellate District, Division Two, in its decisions of *Palacio* and *El Dorado I*. For example, the Residents complain that the time consumed by the Commission in taking evidence on, and rendering its decision with respect to, the first hardship rent increase petition in *El Dorado I* results in an unconstitutional "taking" of property.

Conveniently, however, the Residents failed to apprise this Court that such time as was consumed in this hardship rent increase administrative hearing was occasioned *entirely* by the actions of the Residents and/or Petitioner therein. Most importantly, however, this purported "takings" argument is of recent vintage, and was not raised until in the appellate proceedings in *El Dorado II*. The alleged constitutional impact of the time consumed by the Commission in reaching its administrative rulings on the hardship rent increase petition in *El Dorado I* should have been raised (if at all) by the Residents in the *first* superior court writ proceeding, the *first* appeal to

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[1] For convenience and continuity, the designations given to the parties in both the Petition for Writ of Certiorari and Cross-Petition for Writ of Certiorari will be continued in this opposition. Accordingly, the landlord will be referred to throughout as the "Petitioner," the Real Party in Interest will be referred to as the "Residents," and the Rent Review Commission of the City of Palm Springs will be referred to as the "Commission."

the Fourth Appellate District, and (most importantly) should have been an issue raised by the Residents in a petition (never filed) before this Court following denial of review by the California Supreme Court in *El Dorado I*. Their purported "takings" claim is *not* appropriately before this Court.[2]

Again, the Residents complain that the October 30, 1991 administrative rulings of the Commission constituted the granting of a "retroactive" rent increase in violation of the proscriptions of the Palm Springs Rent Control Ordinance. While the court below correctly *rejected* this argument, it is important to note that this issue presents purely a question of statutory construction of the Palm Springs Rent Control Ordinance; not a question of federal constitutionally law.

Both of the arguments advanced by the Residents as the basis for their cross-petition for review before this Court evidence a *fundamental misunderstanding* of the nature and scope of the actions taken by the Commission on October 30, 1991. As is evident from even a cursory

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[2] "Moreover, the takings" argument advanced by the Residents is nonsensical. First, the argument is premised on the flawed notion that the time taken by the Commission to conduct its administrative proceedings in *El Dorado I* "caused" the Commission to award Petitioner additional hardship rents on October 30, 1991. To the contrary, the 1991 rulings of the Commission did *nothing more* than to set a time limit on a previously court-ordered hardship rent increase. There is utterly no evidence in the record below to establish any causal connection between the time consumed in the administrative proceedings in *El Dorado I* and the rulings of the Commission affirmed in *El Dorado II* particularly given that the latter had no bearing on the former.

review of their cross-petition, the Residents repeatedly mischaracterize the administrative rulings of the Commission as "ordering" the payment of "additional" or "future" hardship rents. In fact, just the opposite is the case. Respectfully, a fair-minded reading of the October 30, 1991 rulings of the Commission inescapably leads to the conclusion that all the Commission did was to fix the duration of a previously court-ordered hardship rent increase and to provide (for the benefit of the Residents) an *optional* payment plan to alleviate the financial hardship inherent in the lump-sum portion of the Superior Court's original Writ of Mandate.

When the October 30, 1991 administrative rulings of the Commission are seen for what they truly are, the arguments advanced by Residents collapse like a house of cards. The Commission did nothing to "take" their property; rather it acted to protect the Residents from paying hardship rents in perpetuity. The Commission did not impose a retroactive rent increase; rather it provided the Residents with a fixed time period over which the previous Court-ordered hardship rents would be collected. And, most importantly, the opinion of the court below in *El Dorado II* did nothing more than to confirm the correctness of the rulings of the Commission.

II.

SUPPLEMENTAL STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Commission incorporates the statement of facts and procedural history set forth in its brief in opposition to the Petition for Writ of Certiorari herein as if set forth

in full. However, the Commission takes issue with respect to that portion of the statement of facts contained in the Cross-Petition for Writ of Certiorari which argues there was an unreasonable delay in the administrative proceedings conducted in connection with *El Dorado I*.

There is *nothing* in the record below to indicate that the time consumed in taking testimony on and reaching a decision in connection with this administrative hardship rent increase proceeding was excessive or inappropriate. Neither is there any evidence in the record below to indicate that either Petitioner or the Residents objected to the time consumed by these administrative hearings.

To the contrary, the time consumed by the administrative proceedings in *El Dorado I* was *never an issue* before the Commission, or before the superior court in the subsequent Writ of Mandate proceeding, or before the Fourth Appellate District in the appeal following the issuance of the mandate ordering an increase in hardship rents. Moreover, the Residents never raised the issue of administrative delay as a basis for further judicial review in their petition before the California Supreme Court seeking review of the opinion of the Fourth Appellate District in *El Dorado I*. None of the parties to *El Dorado I* ever sought review by this Court.

III.

REASONS FOR DENYING THE CROSS-PETITION FOR WRIT OF CERTIORARI

Like Petitioner, the Residents attempt to dress their dissatisfaction with the decision in *El Dorado I* in the habiliments of some federal constitutional deprivations.

However, the *El Dorado II* opinion below did nothing more remarkable than confirm for the Residents that the Commission, in its administrative rulings of October 30, 1991, correctly understood and applied the mandates contained in the opinions of *Palacio* as later clarified and narrowed in *El Dorado I*.

A. The Decision of the Court Below Rests Entirely on Adequate and Independent State-Law Grounds; Such Opinion Addressed Purely State-Law Issues of Statutory Construction. State-Law Issues Regarding the Scope of Petitioner's "Vested Rights."

This Court, long ago, held "[w]here the judgment of a state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction". *Allen v. Argumba*, 198 U.S. 149, 154, 155, 25 S.Ct. 622, 49 L.Ed. 990 (1905). More recently, this Court articulated the rationale for such a rule as being grounded in "[r]espect for the independence of state courts, as well as avoidance of rendering advisory opinions, [which] have been the cornerstone of this Court's refusal to decide cases where there is an adequate and independent state ground." *Michigan v. Long*, 463 U.S. 1032, 1040, 103 S.Ct. 3469, 72 L.Ed.2d 1201 (1983).

Most recently, this Court has held that "[w]hen a state-court decision is clearly based on state law that is both adequate and independent . . . " there will be no basis for further review by the United States Supreme

Court. *Illinois v. Rodriguez*, 497 U.S. 177, 182, 110 S.Ct. 2793, 111 L.Ed. 148 (1990). In determining whether a lower state court's opinion rests on state law, this Court undertakes to review the opinion to see if, in the context of the totality of the opinion, it is "plain" that the decision is grounded in the law of that state. *Illinois, supra*, 497 U.S. at 182; *Michigan, supra*, 463 U.S. at 1042.

For example, in *California v. Freeman*, 488 U.S. 1311, 109 S.Ct. 854, 102 L.Ed.2d 957 (1989), Justice O'Connor reviewed an opinion of the California Supreme Court to determine whether, in light of the teachings of *Michigan v. Long, supra*, 463 U.S. at 1041, it appeared "clear from the face of the opinion that its analysis constitutes an adequate and independent state ground of decision." *Freeman, supra*, 488 U.S. at 1313. Justice O'Connor concluded the analysis contained in the opinion turned on an interpretation of a particular provision of the California penal code. Justice O'Connor further concluded that the structure of the various subsections of the opinion dealt with state law issues which were not "interwoven with federal law," and that such discussion of federal law as existed in that opinion was clearly an "alternative holding" to the decision of the California Supreme Court. *Freeman, supra*, 488 U.S. at 1313-14.

In determining whether the *El Dorado II* opinion below rested its decision on state law grounds, this Honorable Court has only to review the text of that opinion to determine that it "plainly" rests entirely on state law within the Fourth Appellate District. A fair-minded reading of that opinion leads inescapably to the conclusion that, with respect to the issues raised by the Residents, it

"plainly" rests *entirely* on the construction and interpretation to be given the Palm Springs Rent Control Ordinance. Not a single federal authority is cited by the lower court.

In an effort to circumvent this jurisdictional bar to further appellate review, the Residents attempt to "cast" their arguments in constitutional dress. For example, the Residents characterize the October 30, 1991 rulings of the Commission as "ordering" them to pay "future" hardship rents to Petitioner. To the contrary, it was the trial court, as affirmed by the Court of Appeal in *El Dorado I*, that ordered the Residents to pay "future" hardship rents to Petitioner. All the Commission did in its rulings of October 30, 1991 was to set a time limit on such court-ordered hardship rents.

Again, the Residents argue the Commission "ordered" the retroactive payment of hardship rents which is prohibited by the provisions of the Palm Springs Rent Control Ordinance. What is missing from their analysis, however, is a recognition (as confirmed by the Court in *El Dorado II*) that the Commission, in its rulings of October 30, 1991, *did not order payment of hardship rents* (these rents were ordered by the courts), or a recognition that the setting of a time limit on such court-ordered hardship rents did not constitute the imposition of "retroactive rents."

The fundamental "flaw" which repeats itself throughout the entirety of the argument advanced by the Residents in their Cross-Petition for Writ of Certiorari is the notion that the administrative ruling of the Commission on October 30, 1991 constituted the "ordering" or the

"imposition" of "future" hardship rents. No fair-minded reading of those rulings, or of the opinion of the court below, supports such a conclusion. Rather, the action of the Commission, as affirmed by the court below, was to set a time limit on the previously court-ordered hardship rent increase affirmed on appeal in *El Dorado I*. As applied to the Residents, the actions of the Commission, and the Court of Appeal affirming the administrative rulings of the Commission, resulted in limiting the period of time they would have otherwise been obligated to pay the hardship rents previously awarded by the Superior Court.

B. The October 30, 1991 Rulings of the Commission Do Not Result in a "Taking" of Residents' Property.

The Residents' "takings" argument is nonsensical. Stripped of its legal gloss, the argument is as follows:

(1) The Commission took too long in conducting its administrative proceedings (Cross-Petition, pp. 6-7) in connection with the hardship rent increase granted in *El Dorado I*;

(2) The October 30, 1991 rulings of the Commission in *El Dorado II* "ordered" the Residents to pay "future" hardship rents in the amount of $179.46 for a term of 39 months (Cross-Petition, pp. 11-12); and

(3) This ruling constitutes a "taking" of property (whose property is taken is *never defined*) "for which Palm Springs is liable." (Cross-Petition, p. 11.)

The flaws in this argument are legion. The first, and most glaring, of these flaws rests with the notion that the

Commission, on October 30, 1991 "ordered" the Residents to pay "future" hardship rents. As has been made abundantly clear, the hardship rents which the Residents were (and are) obligated to pay were imposed by the Riverside County Superior Court on December 8, 1989, and affirmed by the Fourth Appellate District in its opinion in *El Dorado I* on May 20, 1991. Prior to the October 30, 1991 rulings of the Commission, the court-ordered hardship rent increase would have continued in *perpetuity* (and Petitioner so argued in his petition before this Court).

Had the Commission not acted on October 30, 1991 to set a time limit on this court-ordered hardship rent increase the Residents would be obligated to pay an additional $179.46 to Petitioner forever! Accordingly, there is utterly no causal connection between the length of time consumed in the administrative proceedings in connection with the hardship rent increase petition in *El Dorado I* and the amount of hardship rents ordered by the Superior Court of Riverside County in December of 1989. To the extent that any party has "taken" the property of the Residents (or anybody else for that matter), that party was the Riverside County Superior Court in the *El Dorado I* writ proceeding, from which the Residents *unsuccessfully* prosecuted appeals all the way to the California Supreme Court, but from which the Residents *never sought review* before this Court.

The second glaring flaw in the Residents' "takings" argument is the notion that the administrative rulings of the Commission of October 30, 1991, "ordered" the Residents to pay any sum or amount whatsoever. Without meaning to belabor the point, it is essential to note that the Residents fundamentally mischaracterize the 1991

administrative rulings of the Commission. Those rulings *did not* determine the amount of hardship rents due and owing to Petitioner. Those rulings *did not* order the payment of any hardship rents. And, those rulings *did not* obligate the Residents to pay any sum or amount whatsoever.

By October 30, 1991, the calculation of hardship rents, the total amount of such hardship rents, and the commencement date of such hardship rents had long-ago been determined by the Riverside County Superior Court. On October 30, 1991, the Commission set a time limit on the collection of these court-ordered hardship rents. In so doing, the Commission acted to *protect* the Residents from the imposition of a *permanent* hardship rent increase which was inconsistent with the opinion of the *El Dorado I* court limiting the duration of time that a landlord could pass through debt service expenses to tenants under *Palacio*. Having ruled in favor of the Residents, the Commission now stands accused of having "taken" property for which it is somehow liable. The argument is simply wrong.

C. The Residents' "Takings" Argument is Untimely is Barred for Failure to Exhaust Administrative Remedies.

Rule 13.1 of this Court make it abundantly clear the Residents' "taking" argument is untimely because it should have been raised in *El Dorado I*. As previously noted, this issue was *raised for the first time* in the *appellate*

proceedings in *El Dorado II*. The genius of argument, however, is based on the time required to conduct the administrative proceedings in connection with Petitioner's hardship rent increase in *El Dorado I*. It is curious that neither Petitioner nor the Residents ever asserted administrative delay on the part of the Commission in *any* of the proceedings of the Commission, the trial court, the Court of Appeal, or the California Supreme Court in connection with *El Dorado I*.

Had either party to the hardship rent increase administrative proceedings been unhappy with the time consumed by those proceedings, such party should have raised and asserted alleged administrative delays in connection with the *El Dorado I* proceedings. The failure to do so, when coupled with the failure to seek review by this Court from any of the actions or proceedings in connection with *El Dorado I*, bars the raising of administrative delay in connection with this proceeding.

Since this argument regarding administrative delay was never advanced before the Commission, the trial court, the *El Dorado I* court, the Residents are precluded from raising such in a collateral proceeding due to their failure to exhaust administrative remedies. *California Aviation Council v. County of Amador*, 200 Cal.App.3d 337, 341, 246 Cal.Rptr. 110 (1988) ("[T]he requirement of exhaustion is a jurisdictional prerequisite, not a matter of judicial discretion."). The doctrine of exhaustion of administrative remedies applied to legal challenges to agency determinations and actions resulting both from quasi-adjudicatory proceedings, *Holt v. County of Monterey*, 128 Cal.App.3d 797, 801, 100 Cal.Rptr. 514 (1982), and from legislative proceedings, *Mountain View Chamber*

of Commerce v. Mountain View, 77 Cal.App.3d 82, 88, 143 Cal.Rptr. 441 (1978).

In such proceedings, the exhaustion doctrine precludes a petitioner from raising an issue if the issue was not first raised in the administrative proceeding. *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 292-93, 109 P.2d 942 (1941); *Metcalf v. County of Los Angeles*, 24 Cal.2d 267, 269, 148 P.2d 645 (1944).

It is critical to emphasize that this doctrine is not a rule of equitable application; it is a *jurisdictional prerequisite* to judicial relief. *Morton v. Superior Court*, 9 Cal.App.3d 977, 981, 88 Cal.Rptr. 533 (1970). Exhaustion is condition precedent to obtaining judicial relief, and a court violating that rule acts in excess of jurisdiction. *See also, Sea & Sage Audubon Society, Inc. v. Planning Commission*, 34 Cal.3d 412, 194 Cal.Rptr. 357 (1983).

In addition, under California law, the doctrine of exhaustion requires the petitioner not only to enter a general objection to an action or enactment prior to filing suit, but also to object *specifically to each issue* prior to challenging that issue by means of the judicial process. *Bohn v. Watson*, 130 Cal.App.2d 24, 37, 287 P.2d 454 (1954); *Walnut Creek v. County of Contra Costa*, 101 Cal.App.3d 1012, 1019-20, 162 Cal.Rptr. 224 (1980).

Moreover, it cannot be doubted that the Commission acted promptly in issuing its rulings of October 30, 1991. As the record below demonstrates, the Commission imposed time limits on the court-ordered hardship rent increase within 30 days following its October 8, 1991 return to the Superior Court on the Writ of Mandate, within 60 days of the Residents' Petition for Issuance of a

Further Order dated September 5, 1991, and within 60 days of the opinion in *El Dorado I* becoming final.

D. The October 30, 1991, Rulings of the Commission Do Not Result in the Imposition of Retroactive Rents and the Resolution of that Issue Presents Purely State-Law Issues of Statutory Construction.

As their final basis for review before this Court, the Residents persist in the misguided notion that the October 30, 1991 rulings of the Commission amount to the imposition of retroactive rents as prohibited by the Palm Springs Rent Control Ordinance. This Court will search, in vain, the rulings of October 30, 1991 to find any retroactive hardship rent increase.

Without meaning to belabor this point, all the Commission did was to fix a time limit on the duration of a court-ordered hardship rent increase. There is nothing "retroactive" about such action. The Commission's limiting order acted *prospectively* in an effort to adhere to the mandate of the opinion in *El Dorado I*.

The Residents continue to cry foul when they argue the Commission could not have "awarded" hardship rent increases for years 1987, 1988, and 1989. Again, it was the opinion of the *El Dorado I* court (and not the Commission) that fixed the parameters of a claim of vested rights under the *Palacio* decision. All the Commission did was to calculate the "window" of time when debt service expense could be passed through to the Residents in the form of hardship rents.

That time period commenced with year of application 1986 and continued for three (3) years and three (3) months thereafter until March, 1989. The superior court's writ of mandate in *El Dorado I* did not authorize collection of the full amount of the hardship rent increase attributable to debt service cost pass through until March, 1990.

Accordingly, and because the Palm Springs Rent Control Ordinance does, indeed, prohibit retroactive rent increases, the Commission was compelled to plot this period of hardship rents attributable to debt service expense from March 1, 1990 *forward*. To do so, however, is not to award or impose a hardship rent increase, but is rather to define the parameters of a *previously existing* court-ordered *rent increase*.

The lower court correctly, and summarily, rejected this argument on retroactivity as follows:

> The Residents fail to distinguish between a retroactive rent increase and a prospective rent increase to remedy a past hardship. Although the Commission is prohibited from granting the former, nothing in the Rent Control Laws prevents the Commission from granting the latter. Indeed, under the Rent Control Laws, a prospective rent increase to remedy a past hardship is the only way the ordinance can function because under the guidelines, the commission is obligated to base the rent increase on the actual expense figures for the year of application. The actual operating expense figures are not available until after the year has passed. The rent increase granted in the original proceeding was

> based on 1986 income and expenses, even though the increase was not granted until 1988.
>
> We conclude the Commission did not impose an illegal retroactive rent increase when it fixed the time period for the hardship rent increase at three years and three months based on losses in 1986, 1987, 1988, and part of 1989.

(Appendix No. 1, p. 23.) Nothing in the argument of Residents in their cross-petition changes this result.

More importantly, however, the issue of retroactivity raised by the Residents required the court below to engage in the singularly unremarkable task of reading and construing one particular provision of the Palm Springs Rent Control Ordinance. Respectfully, such an ordinance interpretation task presents absolutely no federal constitutional question warranting review by this Court. Even if (for the sake of argument only) the court below misconstrued that ordinance, Residents' *sole* remedy was to persuade the California Supreme Court to correct any arguable misinterpretation. Nothing in the issue of "retroactivity" presents *any* question of federal law, much less an important one, that has not been, but should be, settled by this Court.

Finally, the efforts of the Residents to create a conflict between the rulings of the lower court in *El Dorado II* and case law of other states borders on bad faith. First, the Residents' attempt to rely on two opinions of the Municipal Court of the City of New York, the first decided in 1957 and the second decided in 1959, to stand for the proposition that retroactive rent increases are prohibited in law. In *El Dora Realty v. Dean*, 6 Misc. 2d 222, 163 N.Y.S.2d 197 (1957) the Municipal Court held that, under

the provisions of the Emergency Price Control Act of 1942, a landlord could not retroactively recover hardship rents which calculated incorrectly due to a mathematical error. In *Ferga Associates, Inc. v. Shulang*, 20 Misc. 2d 778, 191 N.Y.S.2d 413 (1959), the Municipal Court held that "a *landlord* may not institute summary proceedings for monies due when the *landlord* has accepted a part payment of rent for prior months, even though he had not agreed to forgive the indebtedness." (Emphasis added.)

Nothing in the two Municipal Court cases cited by the Residents meets the requirements of Rule 10.1(b) of this Court even if (for the sake of argument only) the October 30, 1991 rulings of the Commission can be deemed to be at variance with those Municipal Court opinions. Of course, there is no inconsistency between the rulings of the Commission and the two New York Municipal Court cases cited by the Residents. The question before the Commission in 1991 did not involve recovery of miscalculated rents; rather the issue resolved by the Commission was how long a court-ordered hardship rent increase would last.

The final authority cited by the Residents for the proposition that the opinion of the court in *El Dorado II* "decided a federal question in a way that conflicts with the decisions of another state court of last resort or of a United States Court of Appeals" is *Apartment & Office Building Washington v. Moore*, 359 A.2d 140 (D.C. 1976). In that case, the court was required to construe and apply the provisions of the District of Columbia Rent Accommodations Act of 1975. In particular, the court was required to determine whether an additional "surcharge" could be added by a landlord to its operating costs to

cover a period of time during which all rent increases had been frozen.

The court concluded only that such a surcharge was not compelled by the Congressional rent control scheme adopted for the District of Columbia and that to authorize such would be unfair to "tenants not in possession" during the period of the rent freeze. 359 A.2d at 143. Nothing about the decision of the court in *Apartment & Office Building Association* raised, implicated, or addressed any federal constitutional issue, nor did the judicial construction of a rent control scheme for the District of Columbia which is different from the rent control scheme in effect in the City of Palm Springs result in any "conflict" between the opinion in *El Dorado II* and any "decision" of a United States Court of Appeal within the meaning of Supreme Court Rule 10.1(b).

V.

CONCLUSION

The Cross-Petition for Writ of Certiorari is proof of the old adage "no good deed goes unpunished." Having issued its administrative rulings of October 30, 1991 setting a time limit on a court-ordered hardship rent increase which, prior to the date of such administrative action, amounted to a rent increase in perpetuity, the Commission now is alleged to have "taken" property in violation of the Constitution of the United States. Nothing could be further from the truth. The Commission acted to *protect* the "property" of the Residents by imposing a time limit within which the Petitioner could collect

hardship rents pursuant to prior court orders. That action is neither a "taking" of property nor does it constitute the imposition of a "retroactive" rent increase. Respectfully, therefore, the Cross-Petition for Writ of Certiorari should be denied.

DATE: December 19, 1994

Respectfully submitted,

RUTAN & TUCKER

WILLIAM W. WYNDER
Attorneys for Respondent,
Rent Review Commission of The
City Of Palm Springs